

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Southern Pacific Transportation Company

Dispute: Claim of Employees;

1. That under the current Agreement, Mechanical Department Electrician R. G. Tyler was unjustly treated when he was dismissed from service on June 26, 1979, following investigation for alleged violation of portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said violation occurring from May 24, through June 5, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines), be ordered to:
  - (a) Restore Electrician R. G. Tyler to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages including interest at the rate of six percent (6%) per annum.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, Mr. Tyler, was notified by certified mail dated June 5, 1979 to appear for an investigation on June 18, 1979. The purpose of the hearing as outlined in the letter read:

"... your alleged continued failure to protect your employment on May 24, 1979, through June 5, 1979, which may involve violation of Rule 810 of the General Rules and Regulations, that part reading:

Rule 810: Continued failure by employes to protect their employment shall be sufficient cause for dismissal."

The investigation was held as scheduled and following that hearing the penalty herein complained of was assessed. After a careful review of the

transcript we find that the hearing was conducted in accordance with **contractual** requirements and past practice.

The record reveals that Mr. Tyler was in fact absent from work on the days under consideration and the Carrier received no word regarding the reasons for his absence. Claimant's actions constitute a clear violation of the rules as charged.

The gravamen of the Organization's defense resides in its view that the hearing was unfair because Mr. Tyler was not present to give his side of the story. The record contains a receipt signed by a Karma Tyler signifying that the notice of investigation was received at his last known address. He was given sufficient time to appear if he so desired. Claimant cannot frustrate the processes of the contract by refusing to appear at an investigation. He was represented by the Organization and the contractual commitments were fulfilled.

It should be noted that the record reveals that claimant had been absent from work since May 30, 1978. Several attempts by the Carrier to contact him to determine the reason for his absence were ineffective. The Organization made some attempt to locate Mr. Tyler with the same result.

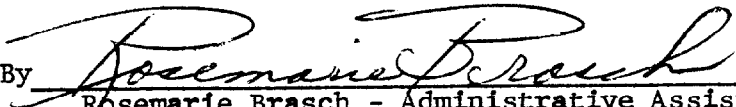
In view of the foregoing and the entire record we find that claimant was guilty as charged. Further, there is nothing in the record which would warrant a more lenient penalty.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.